

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID KIRCHER and
MARTINA GLOSTER,

Plaintiffs,

CASE NO. 05-73425
HON. LAWRENCE P. ZATKOFF

v.

CITY OF YPSILANTI, CHARLES BOULARD,
JOHN ICHESCO, OFFICER DORSEY,
JOHN DOE police officer, and ED KORYZNO,
Individually and in their official capacity,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO SET ASIDE JUDGMENT

On October 12, 2005, Defendants filed a Motion to Quash Service of Process and to Dismiss. Plaintiffs David Kircher and Maria Gloster, *pro se*, failed to respond. On March 22, 2006, the Court issued an Order to Show Cause as to why Plaintiffs failed to respond to Defendants' Motion to Quash. Plaintiffs again failed to respond. Accordingly, on May 4, 2006, the Court granted Defendants' Motion to Quash and to Dismiss and entered Judgment in the above case. The Court also awarded attorney's fees to Defendants.

On May 15, 2006, Plaintiffs filed the present Motion to Set Aside Judgment. In the Motion, Plaintiffs asserted (1) that they did not receive the Court's March 22, 2006 Order to Show Cause, and (2) that they responded to Defendants' Motion to Quash by re-serving Defendants. In their Response, Defendants agree that following the filing of their Motion to Quash, Defendants Boulard, Dorsey, Koryzno, and the City of Ypsilanti were properly served by Plaintiffs. Defendants assert that Defendant Ichesco has yet to be properly served.

Based on the representations of the parties and a review of the docket, it appears to the Court

that Defendants have been properly served.¹ Accordingly, the Court GRANTS Plaintiffs' Motion to set aside and HEREBY SETS ASIDE its May 4, 2006 Judgment. Additionally, the Court SETS ASIDE the May 4, 2006 Order granting Defendant's Motion to Quash and to Dismiss and SETS ASIDE the order awarding attorney's fees to Defendants.

Though the Court is granting Plaintiffs the relief requested, the Court remains dissatisfied with Plaintiffs' actions in this case. Plaintiffs failed to properly respond to Defendants' Motion to Quash and failed to respond to the Court's March 22, 2006 Order to Show Cause.² Based on these failures, the Court believes that Plaintiffs should be sanctioned for the additional attorney's fees and costs which were incurred due to Plaintiffs' failure to properly respond to Defendants' Motion to Quash and failure to respond to the Court's Order to Show Cause. Defendants may bring a Motion for these fees upon the conclusion of this case.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 29, 2006

¹ If Defendant Ichesco wishes to challenge service of process, he may file a motion.

² Though Plaintiffs assert that they did not receive the March 22, 2006 Order to Show Cause, the Court's records indicate that the Order was mailed to Plaintiffs.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 29, 2006.

s/Marie E. Verlinde

Case Manager

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